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IN THE
COURT OF APPEALS OF INDIANA

MIKE WITTMAN and LINDA WITTMAN,	)	
	)	
Appellants-Plaintiffs,	)	
	)	
vs.	)	No. 49A02-0606-CV-529
	)	
CAROLYN DUNING, MARK BROWN and HEAVENLY SCENTS CANDLE COMPANY, LLC.,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable S.K. Reid, Judge
Cause No. 49D13-0503-PL-10818

May 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Mike Wittman and Linda Wittman appeal an order enforcing a settlement agreement in favor of Carolyn Duning, Mark Brown, and Heavenly Scents Candle Company, LLC. Because there was no "meeting of the minds" regarding the terms of a settlement agreement, no agreement was formed. We accordingly reverse and remand.

FACTS AND PROCEDURAL HISTORY[1]

In August 2004, the Wittmans agreed to sell Heavenly Scents to Duning and Brown. In March 2005, the Wittmans sought to have the sales agreement rescinded, alleging mutual mistake and material breach of contract. They also sought damages for tortious interference with the contract. Duning and Brown counterclaimed.

On October 26, 2005, the Wittmans' counsel proposed to settle the lawsuit:

> I have discussed with [the Wittmans] a resolution of the dispute. In that regard they have authorized me to make the following proposal:
> a. Your clients [Duning and Brown] return the 1998 Dodge pickup, the snow blade that goes on the front end of it and the 2001 16' cargo trailer. In return the parties would enter into a mutual dismissal of the litigation or,
> b. Your clients honor/comply with the Contract terms.

(App. at 26.)

On November 2, 2005, Dunning and Brown responded: "Enclosed herewith please find a proposed Settlement Agreement which hopefully incorporates option A that was presented in your letter dated October 26, 2005. I tried to make it a little bit more

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[1] On December 15, 2006, Duning filed a notice of bankruptcy with this court. Because Duning was implicitly requesting we hold the appeal in abeyance and refrain from taking action on the appeal during the pendency of the bankruptcy, we directed the Wittmans to show cause why the entire appeal in this matter should not be held in abeyance during bankruptcy proceedings.

On April 30, 2007, we ordered the appeal with respect to Brown and Heavenly Scents to go forward, the appeal with respect to Duning be held in abeyance during her bankruptcy proceedings, and Duning to provide this Court with status reports every ninety days.

specific so that there will not be further questions between the clients." (*Id.* at 27.) The Settlement Agreement included return of the truck, snowplow and trailer in exchange for the dismissal of the lawsuit with prejudice. However, four other provisions were included:

> 3. The parties shall not disparage the other party to anyone, including present and potential customers of their respective businesses.
> 4. That Wittmans are entitled to keep all sums paid to it by Purchasers and Purchasers are to retain all property it has received to date as a result of the purported contract. Purchasers shall also be entitled to the 1-800 number for which it has made payments. Wittmans agree to execute all documents necessary for Purchasers to retain said 800 number.
> 5. Each party is free to compete in the scented candle business consistent with the laws of the State of Indiana, however Wittmans agree to not contact the customers identified on Exhibit "A" attached hereto.
> 6. Each party shall bear his or her own attorneys fees.

(*Id.* at 28.)

The Wittmans' counsel responded on November 11, 2005:

> Your letter of November the 2nd, and its attachment has been discussed with my client. Unfortunately that is no longer acceptable for the reason that the proposal that was made to you was to cause peace in the family. The only thing that has occurred is that things are further from peace, battles and wars are still ongoing.

(*Id.* at 29.)

On November 15, 2005, Duning and Brown filed a motion to "enforce a settlement agreement entered into between the parties." (*Id.* at 24.) After a hearing, the trial court entered the following order:

> The Court NOW FINDS that at the instance of plaintiffs, a written settlement offer was issued on or about October 26, 2005 a copy of which

> is attached to the Motion to Enforce Settlement Agreement along with supporting documents by the parties' counsel.
>
> The Court further finds that there was no time limit for said offer.
>
> The Court finds that on November 2, 2005, the defendant accepted the settlement proposal.
>
> The Court further finds that the Settlement Agreement as written and included in the November 2, 2005 letter incorporates the Settlement Agreement per the parties.
>
> IT IS THEREFORE ORDERED ADJUDGED AND DECREED that within five (5) days of this Order, the parties shall sign the Settlement Agreement and abide in its terms.

(*Id.* at 8.)

DISCUSSION AND DECISION

Indiana strongly favors settlement agreements. *Georgos v. Jackson*, 790 N.E.2d 448, 453 (Ind. 2003), *reh'g denied*. If a party agrees to settle a pending action but then refuses to consummate his settlement agreement, the opposing party may obtain a judgment enforcing the agreement. *Id.*

General rules applicable to construction of contracts govern construction of settlement agreements. *Martinez v. Belomonte*, 765 N.E.2d 180, 183 (Ind. Ct. App. 2002), *reh'g denied*. The interpretation and construction of contract provisions is a function for the courts. *Id.* When the court construes a written contract as a matter of law, our review is *de novo*. *Allstate Ins. Co. v. Bradtmueller*, 715 N.E.2d 993, 996 (Ind. Ct. App. 1999), *trans. denied* 735 N.E.2d 228 (Ind. 2000).

The formation of a contract involves both offer and acceptance.

> It is well settled that in order for an offer and an acceptance to constitute a contract, the acceptance must meet and correspond with the offer in every respect. This rule is called the "mirror image rule." An acceptance which varies the terms of the offer is considered a rejection and operates as a counteroffer, which may be then accepted by the original offeror.

Martinez, 765 N.E.2d at 183. A "meeting of the minds" on all essential elements or terms is necessary to form a binding contract. *Ind. Dept. of Corr. v. Swanson Servs. Corp.*, 820 N.E.2d 733, 737 (Ind. Ct. App. 2005), *reh'g denied*, *trans. denied* 841 N.E.2d 180 (Ind. 2005).

The Wittmans offered to settle the lawsuit if Duning and Brown would return the pickup, snow blade, and cargo trailer. Duning and Brown indicated this option was better than the Wittmans' other proposal. However, Duning and Brown's response to the Wittmans' offer added four provisions: an agreement not to disparage the other party, details regarding the division of money and a 1-800 number, an agreement regarding contacting certain clients, and a provision for attorney fees. Because this was not the mirror image of the original offer, the "acceptance" operated as a rejection and counteroffer. The Wittmans rejected the counteroffer, stating it was "no longer acceptable." (App. at 29.)

Because there was no meeting of the minds, no settlement agreement was formed. The trial court erred in granting Duning and Brown's motion to enforce it.

CONCLUSION

Because no settlement agreement was formed, the trial court erred in granting the motion to enforce. Accordingly, with respect to Brown and Heavenly Scents, we reverse and remand to the trial court for further proceedings. The appeal with respect to Duning is held in abeyance during the pendency of her bankruptcy proceedings.

Reversed and remanded in part, held in abeyance in part.

RILEY, J., and BAILEY, J., concur.